

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THOMAS HUBBARD,

Plaintiff,

vs.

PHIL'S BBQ OF POINT LOMA, INC., a California corporation; PHILLIP C. PACE and JEFFFRFY A. LOYA

Defendants.

CASE NO. 09CV0735-LAB (KSC)

**ORDER DENYING WITHOUT
PREJUDICE MOTION TO FILE
DECLARATION UNDER SEAL**

Defendants Pace and Loya have moved *ex parte* for an order permitting the declaration of John Cheng (offered in support of their opposition to Plaintiff's motion for summary judgment), and the motion is unopposed. The motion does not brief the standard for sealing of documents submitted in connection with dispositive motions, and the parties' consent to have it sealed is insufficient. See *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

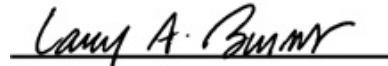
The Court notes that the declaration contains confidential financial information that is subject to a protective order. But the mere fact that a protective order is in place does not mean that the standard for filing documents under seal is met. See *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678–79 (9th Cir. 2010) (discussing “compelling reasons” standard that applied to motion to seal documents in support of motion for summary

1 judgment, and contrasting this standard with standard for protective order). Before sealing,
2 the Court “must weigh relevant factors, base its decision on a compelling reason, and
3 articulate the factual basis for its ruling, without relying on hypothesis or conjecture.” *Id.* at
4 679 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)) (quotation marks
5 omitted).

6 Because Pace’s and Loya’s application does not explain in any detail the reason why
7 sealing is needed, the Court cannot undertake the required analysis. The application is
8 therefore **DENIED WITHOUT PREJUDICE**. No later than noon on Friday, October 19, 2012,
9 Pace and Loya may renew their application, which must be filed in the docket. The Court will
10 retain the lodged materials, however, and they need not refile those.

11 **IT IS SO ORDERED.**

12 DATED: October 16, 2012

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14 HONORABLE LARRY ALAN BURNS
15 United States District Judge
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